the Circuit Court of Appeals for the seventh circuit, and a later contrary decision, on the same facts, by the Circuit Court of Appeals for the second circuit, followed the Court of Appeals of its own circuit.[3] *Eldred* v. *Breitwieser*, 132 Fed. Rep. 251. The result is that a patent which gives rise to rights and liabilities in Connecticut, New York, and Vermont may in Illinois, Indiana, and Wisconsin be a mere nullity.

The only relief for this anomalous condition, at present, lies in review, upon *certiorari* or certification, by the Supreme Court. Although a circuit court of appeals may certify its inability to decide an issue, the mere existence of contrary views in different circuits is not of itself sufficient ground for submission of a question to the Supreme Court.[4] That some remedy is needed is evident. The government, by conferring letters patent, grants exclusive enjoyment in one piece of property throughout the jurisdiction of the United States. The construction of this grant, which is matter for the courts, should be co-extensive with the right which it purports to confer. The patentee, on the one hand, is entitled to complete protection, if he has justly been given a public grant. A patent, on the other hand, "in a broad sense deals with and determines the rights of the public;"[5] if invalid, the public should have its invalidity recognized throughout the United States. Patent rights rest upon grounds of policy which ought not to be defeated by ineffective patent jurisdiction.

The remedy of *certiorari* to the Supreme Court is inadequate, for the duration of a patent is too short to justify submission to the slow process of suits through circuit courts of appeal and the Supreme Court. To secure prompt unanimity of decision upon the same patent as well as uniformity of principles guiding patent adjudication, the American Bar Association has cogently argued that the present jurisdiction of the nine circuit courts of appeal should be lodged in one court.[6] It may be objected that such a plan will create a "class court," and that judges, confined to patent cases, will become too technical in the application of the law. But patent law is *sui generis*, and should be administered by judges specially fitted for the work. The danger of undesirable technicality in adjudication is obviated by the plan of the Bar Association, which provides for only one permanent justice assisted by circuit judges appointed for the term of six years.

LIMITATIONS OF THE DOCTRINE OF CONSTRUCTIVE NOTICE BY POSSESSION. — The theory upon which courts proceed in holding possession to be constructive notice of whatever rights the occupant may have in the premises is that possession, being *prima facie* evidence of some interest in the land by the tenant, should normally place a purchaser upon his guard and lead him to investigate the extent and nature of such interest. Any failure on his part to make inquiry is, therefore, regarded as an exhibition of negligence or bad faith which ought to place him in no better position than that of a purchaser with full knowledge of the adverse claim.[1] In some juris-

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[3] But see Pelze *v.* Geise, 87 Fed Rep. 869.

[4] Columbia Watch Co. *v.* Robbins, 148 U. S. 266.

[5] Jenkins, J., in Electric Mfg. Co. *v.* Edison, etc., Light Co., 61 Fed. Rep. 834, 837.

[6] See Report of Committee on Patent, Trade-mark, and Copyright Law, 26 Reports of Am. Bar Ass. 460 (1903).

[1] Rublee *v.* Mead, 2 Vt. 544.

dictions, however, this doctrine has been extended to cases hardly within its reasoning. For example, it has been decided in Michigan that possession by one tenant in common is constructive notice of an unrecorded conveyance to him from his co-tenant, as against a subsequent mortgagee of the latter who had no actual notice.[2] Taking for granted the proposition that possession under a contract to purchase is constructive notice of the possessor's rights, it is argued that the rule cannot be altered by the fact that such possessor holds also a present record interest in the land. The Supreme Court of Texas, apparently disregarding a former contrary decision in its own jurisdiction,[3] has recently reached the same conclusion. *Collum* v. *Sanger Bros.*, 82 S. W. Rep. 459.

If the reasoning of these cases is correct it must be equally applicable to an unrecorded release by the remainderman to a tenant for years, for life, or in tail against a subsequent vendee, mortgagee, or judgment creditor of the remainderman without actual or record notice of the conveyance. And the question is squarely raised whether possession which may be explained under a right appearing of record should be constructive notice of another and different right. As the object of the registry system is to facilitate transfers of land by protecting those who deal with the owners of the record title, the purchaser ought, unless there is some potent reason to the contrary, to be able to rely upon the record. Therefore, when his search reveals an instrument entirely consistent with the possession of the tenant, he should be permitted to consider it a complete explanation.[4] Under such circumstances he certainly is not acting negligently or in bad faith. Evidently one of the parties must suffer from the wrongful act of the original grantor, but justice demands that it should not be the wholly innocent party. Since the difficulty was made possible by the laches on the part of the tenant in failing to have his conveyance recorded, he should suffer the consequences.

Imputed Negligence in the Case of a Gratuitous Passenger. — It is generally settled that a passenger in a public conveyance does not so identify himself with the carrier that the latter's negligence, contributing to the passenger's injury, prevents his recovery from a negligent third party.[1] The position of a gratuitous passenger in a private conveyance not controlled by his own servant, though seemingly based upon similar principles, is perhaps more in dispute. Many cases of the sort, apparently involving imputed negligence, have in reality gone off upon other grounds. For example, the passenger himself may be negligent in permitting an incompetent person to drive him. More frequently a plaintiff is guilty of actual negligence at the time of the accident; for if he has any control over his host or his driver he is not absolved from a duty to take reasonable care in noticing and pointing out dangers.[2]

But for imputed negligence itself we find a well-recognized field in cases of joint enterprise. Familiar instances are where a number of men hire a

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[2] Weisberger *v.* Wisner, 55 Mich. 246.
[3] Allday *v.* Whitaker, 66 Tex. 669.
[4] Palmer *v.* Bates, 22 Minn. 532; May *v.* Sturdivant, 75 Iowa 116; Plumer *v.* Robertson, 6 Serg. & R. 179 (Pa.); Staples *v.* Fenton, 5 Hun 172.

[1] Little *v.* Hackett, 116 U. S. 366.
[2] Whitman *v.* Fisher, 98 Me. 575; Allyn *v.* Boston, etc., R. R. Co., 105 Mass. 77.